

ASSEMBLY BILL

No. 1774

**Introduced by Committee on Human Services (Evans (Chair),
Haynes (Vice Chair), Arambula, Bass, Coto, Nation, and
Spitzer)**

April 27, 2005

An act to amend Sections 361.4 and 16504.5 of the Welfare and Institutions Code, relating to criminal record checks, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1774, as introduced, Committee on Human Services. Child welfare services: criminal record checks.

(1) Existing law requires the establishment and support of a public system of statewide child welfare services. Under existing law, a child welfare agency is authorized to secure from an appropriate governmental agency state summary criminal history information through the California Law Enforcement Telecommunications System (CLETS), for 3 designated purposes, including to assess the appropriateness and safety of placing a child in the approved home of a relative or nonrelative extended family member. Existing law further requires a child welfare agency to ensure initiation of a state and federal level fingerprint check within 5 judicial days of the initiation of the CLETS criminal background check.

This bill would require the child welfare agency to ensure initiation of the fingerprint check only when the criminal background check is initiated for the purpose of assessing the appropriateness and safety of placing a child, and not when the background check is initiated for the other designated purposes. The bill would also require a child welfare agency to follow specified procedures during an emergency situation,

as defined, for purposes of securing from an appropriate governmental criminal justice agency the federal level criminal history information of each adult residing in a home. The bill would further extend the time period to initiate fingerprint checks to 10 calendar days.

By adding to the duties of local child welfare agencies with regard to the above, this bill would impose a state-mandated local program.

Under existing law, the other designated purposes for which a background check may be initiated under these provisions include conducting an investigation of suspected child abuse or neglect cases.

This bill would add to the designated purposes for which a background check may be initiated under these provisions to conduct an investigation into the suitability of returning a child to his or her parent or guardian subsequent to removal resulting from an investigation of child abuse or neglect.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 361.4 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 361.4. (a) Prior to placing a child in the home of a relative, or
- 4 the home of any prospective guardian or other person who is not
- 5 a licensed or certified foster parent, the county social worker
- 6 shall visit the home to ascertain the appropriateness of the
- 7 placement.
- 8 (b) Whenever a child may be placed in the home of a relative,
- 9 or the home of any prospective guardian or other person who is
- 10 not a licensed or certified foster parent, the court or county social
- 11 worker placing the child shall cause a state and federal level

1 criminal records check to be conducted by an appropriate
2 governmental agency through the California Law Enforcement
3 Telecommunications System (CLETS) pursuant to Section
4 16504.5. The criminal records check shall be conducted with
5 regard to all persons over the age of 18 years living in the home,
6 and on any other person over the age of 18 years, other than
7 professionals providing professional services to the child, known
8 to the placing entity who may have significant contact with the
9 child, including any person who has a familial or intimate
10 relationship with any person living in the home. A criminal
11 records check may be conducted pursuant to this section on any
12 person over the age of 14 years living in the home who the
13 county social worker believes may have a criminal record.
14 ~~Within five judicial~~ 10 calendar days following the criminal
15 records check conducted through the California Law
16 Enforcement Telecommunications System, the social worker
17 shall ensure that a fingerprint clearance check of the relative and
18 any other person whose criminal record was obtained pursuant to
19 this subdivision is initiated through the Department of Justice to
20 ensure the accuracy of the criminal records check conducted
21 through the California Law Enforcement Telecommunications
22 System and shall review the results of any criminal records check
23 to assess the safety of the home. The Department of Justice shall
24 forward fingerprint requests for federal level criminal history
25 information to the Federal Bureau of Investigation pursuant to
26 this section.

27 (c) Whenever a child may be placed in the home of a relative,
28 or a prospective guardian or other person who is not a licensed or
29 certified foster parent, the county social worker shall cause a
30 check of the Child Abuse Index pursuant to subdivision (a) of
31 Section 11170 of the Penal Code to be requested from the
32 Department of Justice. The Child Abuse Index check shall be
33 conducted on all persons over the age of 18 years living in the
34 home.

35 (d) (1) If the criminal records check indicates that the person
36 has no criminal record, the county social worker and court may
37 consider the home of the relative, prospective guardian, or other
38 person who is not a licensed or certified foster parent for
39 placement of a child.

(2) If the criminal records check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child pursuant to paragraph (3).

(3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a request with the Director of Social Services seeking permission for the county to establish a procedure to evaluate and grant appropriate individual criminal records exemptions for persons described in subdivision (b). The director shall grant or deny the county's request within 14 days of receipt. The county shall evaluate individual criminal records in accordance with the standards and limitations set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code, and in no event shall the county place a child in the home of a person who is ineligible for an exemption under that provision.

(B) The department shall monitor county implementation of the authority to grant an exemption under this paragraph to ensure that the county evaluates individual criminal records and allows or disallows placements according to the standards set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(4) The department shall conduct an evaluation of the implementation of paragraph (3) through random sampling of county exemption decisions.

(5) The State Department of Social Services shall not evaluate or grant criminal record exemption requests for persons described in subdivision (b), unless the exemption request is made by an Indian tribe pursuant to subdivision (f).

(6) If a county has not requested, or has not been granted, permission by the State Department of Social Services to establish a procedure to evaluate and grant criminal records exemptions, the county may not place a child into the home of a person described in subdivision (b) if any person residing in the

1 home has been convicted of a crime other than a minor traffic
2 violation, except as provided in subdivision (f).

3 (e) Nothing in this section shall preclude a county from
4 conducting a criminal background check that the county is
5 otherwise authorized to conduct using fingerprints.

6 (f) Upon request from an Indian tribe, the State Department of
7 Social Services shall evaluate an exemption request, if needed, to
8 allow placement into an Indian home that the tribe has designated
9 for placement under the Indian Child Welfare Act (25 U.S.C.
10 Sec. 1901 et seq.) that would otherwise be barred under this
11 section. However, if the county with jurisdiction over the child
12 that is the subject of the tribe's request has established an
13 approved procedure pursuant to paragraph (3) of subdivision (d),
14 the tribe may request that the county evaluate the exemption
15 request. Once a tribe has elected to have the exemption request
16 reviewed by either the State Department of Social Services or the
17 county, the exemption decision may only be made by that entity.
18 Nothing in this subdivision limits the duty of a county social
19 worker to evaluate the home for placement or to gather
20 information needed to evaluate an exemption request.

21 (g) This section shall remain in effect only until January 1,
22 2010, and as of that date is repealed, unless a later enacted
23 statute, that is enacted before January 1, 2010, deletes or extends
24 that date.

25 SEC. 2. Section 16504.5 of the Welfare and Institutions Code
26 is amended to read:

27 16504.5. (a) (1) Notwithstanding any other provision of law,
28 pursuant to subdivision (b) of Section 11105 of the Penal Code, a
29 child welfare agency may secure from an appropriate
30 governmental *criminal justice* agency the state summary criminal
31 history information, as defined in subdivision (a) of Section
32 11105 of the Penal Code, through the California Law
33 Enforcement Telecommunications System ~~and the criminal~~
34 ~~history information from the Federal Bureau of Investigation~~
35 pursuant to subdivision (d) of Section 309, and subdivision (a) of
36 Section 1522 of the Health and Safety Code for the following
37 purposes:

38 ~~(1)~~

39 (A) To conduct an investigation pursuant to Section 11166.3 of
40 the Penal Code or an investigation involving a child in which the

1 child is alleged to come within the jurisdiction of the juvenile
2 court under Section 300.

3 ~~(2)~~

4 *(B) To conduct an investigation into the suitability of*
5 *reunifying a child with his or her parent or guardian subsequent*
6 *to removal resulting from an investigation of child abuse or*
7 *neglect.*

8 *(C) To assess the appropriateness and safety of placing a child*
9 *who has been detained or is a dependent of the court, in the*
10 *approved home of a relative pursuant to Section 309 or 361.4, or*
11 *the approved home of a nonrelative extended family member as*
12 *described in Section 362.7 during an emergency situation.*

13 ~~(3)~~

14 *(D) To attempt to locate a parent or guardian pursuant to*
15 *Section 311 of a child who is the subject of dependency court*
16 *proceedings.*

17 ~~(b)~~

18 *(2) Any time that a child welfare agency initiates a criminal*
19 *background check through the California Law Enforcement*
20 *Telecommunications System for the purpose described in*
21 *subparagraph (B) or (C) of paragraph (1), the agency shall*
22 *ensure that a state-and federal level fingerprint check is initiated*
23 *within five judicial 10 calendar days of the check, unless the*
24 *whereabouts of the subject of the check are unknown or the*
25 *subject of the check refuses to submit to the fingerprint check.*
26 *The Department of Justice shall provide the requesting agency a*
27 *copy of all criminal history information regarding an individual*
28 *that it maintains pursuant to subdivision (b) of Section 11105 of*
29 *the Penal Code.*

30 ~~(e) Law enforcement~~

31 *(b) (1) During an emergency situation, to assess the*
32 *appropriateness and safety of placing a child in home care due to*
33 *the absence of parents or custodians, a child welfare agency may*
34 *secure from an appropriate government criminal justice agency*
35 *the federal level criminal history information of each adult*
36 *residing in the home through the California Law Enforcement*
37 *Telecommunications System from the Federal Bureau of*
38 *Investigation.*

39 *(2) The results of the check done pursuant to paragraph (1)*
40 *may be provided to the child welfare agency, which shall then*

1 *provide a complete set of each adult resident's fingerprint*
2 *images to the Department of Justice for the submission to the*
3 *Federal Bureau of Investigation within 10 calendar days from*
4 *the date the check was conducted.*

5 *(3) The child shall be removed immediately from the home if*
6 *any adult resident fails to provide the fingerprint images when*
7 *requested pursuant to paragraph (2), unless the child welfare*
8 *agency makes a good cause determination that unavoidable*
9 *circumstances have caused the delay and that good faith efforts*
10 *are being made to ensure compliance.*

11 *(4) When placement of a child in a home is denied as a result*
12 *of the check done pursuant to paragraph (1), and the resident*
13 *contests that denial on the basis of misidentification, each*
14 *resident shall, within 10 calendar days, submit to the child*
15 *welfare agency a complete set of the resident's fingerprint*
16 *images to be forwarded to the Department of Justice for*
17 *submission to the Federal Bureau of Investigation.*

18 *(c) As used in this section, "emergency situation" refers to*
19 *those limited instances when the child welfare agency is placing*
20 *a child in the home of an approved relative pursuant to Section*
21 *309 or 361.4, or the approved home of an extended family*
22 *member as described in Section 362.7, as a result of a sudden*
23 *unavailability of the child's primary caretaker.*

24 *(d) Criminal justice personnel shall cooperate with requests*
25 *for criminal history information authorized pursuant to this*
26 *section and shall provide the information to the requesting entity*
27 *in a timely manner. The Department of Justice shall forward*
28 *fingerprint requests for federal level criminal history information*
29 *to the Federal Bureau of Investigation pursuant to this section.*

30 ~~(d)~~

31 *(e) Any law enforcement officer or person authorized by this*
32 *section to receive the information who obtains the information in*
33 *the record and knowingly provides the information to a person*
34 *not authorized by law to receive the information is guilty of a*
35 *misdemeanor as specified in Section 11142 of the Penal Code.*

36 ~~(e)~~

37 *(f) Information obtained pursuant to this section shall not be*
38 *used for any purposes other than those described in subdivision*
39 *(a).*

40 ~~(f)~~

1 (g) Nothing in this section shall preclude a relative or other
2 person living in a relative's home from refuting any of the
3 information obtained by law enforcement if the individual
4 believes the *state or federal level* criminal records check revealed
5 erroneous information.

6 (h) *The Department of Justice and the Federal Bureau of*
7 *Investigation may each charge a fee sufficient to cover the costs*
8 *of processing the fingerprint image-based criminal history*
9 *record check.*

10 SEC. 3. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.

15 SEC. 4. This act is an urgency statute necessary for the
16 immediate preservation of the public peace, health, or safety
17 within the meaning of Article IV of the Constitution and shall go
18 into immediate effect. The facts constituting the necessity are:

19 In order to comply with federal requirements for emergency
20 child placement inquiries, it is necessary that this act take effect
21 immediately.